U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DENNIS J. HUBSCHER and DEPARTMENT OF THE INTERIOR, OFFICE OF THE SECRETARY, Washington, D.C.

Docket No. 96-449; Submitted on the Record;
Issued June 19, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained an emotional condition in the performance of duty.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act. On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction in force or his frustration from not being permitted to work in a particular environment or to hold a particular position.[1] Where appellant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.[2]

One of the factors implicated by appellant was extensive travel, which can be compensable as a requirement of employment. The employing establishment stated that appellant traveled approximately 35 percent of the time during his detail to the Bureau of Indian Affairs (BIA). The Office of Workers' Compensation Programs properly found that appellant's travel was substantiated and was within the performance of duty.

Most of the factors to which appellant attributed his emotional condition constitute administrative or personnel matters: reassignments, details, performance evaluations, and leave usage. Generally, actions of the employing establishment in administrative or personnel matters,

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[1] *Lillian Cutler*, 28 ECAB 125 (1976).

[2] *Joel Parker, Sr.*, 43 ECAB 220 (1991).

unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of personnel matters, coverage may be afforded.[3] Appellant filed several grievances with the employing establishment about these matters, and on May 12, 1992 he and the employing establishment entered into a settlement agreement whereby appellant withdrew his March 12, 1992 grievance and the employing establishment paid him $12,000.00, allowed appellant to progress noncompetitively to the assessment center phase of the Senior Executive Service Candidate Development Program, and continued to support appellant's application to the Industrial College of the Armed Forces (ICAF). Contrary to the finding in the Office's October 6, 1994 decision that this settlement establishes no error on the part of the employing establishment, such settlement agreements are neutral: they neither show error or abuse by the employing establishment, nor do they show that such error or abuse did not occur.[4]

Many of the errors appellant alleged on the part of the employing establishment have not been substantiated. Appellant has not shown any error in the employing establishment's decision to detail him to the Fish and Wildlife Service in August 1986. Nor has he shown any error in the employing establishment's decision to detail him to BIA in November 1987 when his former division, the Office of Youth Programs was abolished. That appellant did not find the work at BIA challenging or meaningful does not constitute a compensable factor of employment.[5] There is no substantiation of appellant's allegation that the employing establishment violated the Indian Preference Law during his assignment at BIA. Appellant also has not substantiated that the employing establishment erred when, upon his completion of training at ICAF, it did not select him for the Senior Executive Service but instead reassigned him to another position. The employing establishment's Office of Hearings and Appeals found that there was no error in the provision of new performance elements and standards to appellant on March 31, 1992, or in his receipt of a position description on April 15, 1992. Appellant also has not substantiated any error in the employing establishment's granting of annual rather than sick leave during the period from November 29, 1993 to January 4, 1994, in the denial of a request for leave from January 10 to June 1, 1994, or in treatment of appellant's travel voucher for travel undertaken in August 1992. As found by the employing establishment's Office of Special Counsel, there was no error in excluding appellant from the performance management system in November 1987 or in notifying appellant of this exclusion.

Some of the errors alleged by appellant have been substantiated by the employing establishment. Appellant alleged that his detail to BIA exceeded the maximum allowable time for details, and the employing establishment's Office of Special Counsel found that "the agency may have violated the Federal Personnel Manual regulations on details (Chapter 300, Subchapter 8), in that the detail lasted too long." As this subchapter states that details will last a maximum of one year and appellant's detail to BIA lasted over four years, error by the

[3] *Michael Thomas Plante*, 44 ECAB 510 (1993).

[4] *See Barbara E. Hamm*, 45 ECAB 843 (1994).

[5] *David M. Furey*, 44 ECAB 302 (1992).

employing establishment is established. Another error, substantiated by the employing establishment's Office of the Solicitor, was the employing establishment's failure to issue appellant a position description until November 11, 1991 for the position he had performed since November 1987. The employing establishment also erred by not timely performing performance appraisals for 1988, 1989, 1990 or 1991, as found by the employing establishment's Office of Special Counsel. As found by the employing establishment's Office of Hearings and Appeals in a December 7, 1993 decision, the employing establishment also erred by not performing a performance appraisal for the work appellant performed from July 1, 1990 to June 30, 1991; the grievance examiner ordered that this appraisal be done. The employing establishment's Office of Special Counsel also substantiated appellant's allegation that his supervisor "should have conducted a mid-term progress review." Upon appellant's complaint that he was not allowed to participate in the preparation of his performance standards for fiscal year 1993, the employing establishment rescinded these standards and allowed appellant's participation. In a decision dated September 29, 1993, the Comptroller General of the United States restored 20 hours of annual leave forfeited by appellant at the end of 1992. Although appellant had requested that 80 hours of leave be restored, the Comptroller General's decision showed that the employing establishment erred in not restoring any of the requested leave.

Since appellant has alleged and substantiated some compensable factors of employment, the Board will analyze the medical evidence to determine whether it establishes that these compensable factors of employment contributed to appellant's emotional condition.[6] In a report dated July 19, 1993 Dr. Carl J. Slavin, an internist , attributed appellant's condition -- diagnosed by this doctor as panic attacks, post-traumatic stress disorder, major depression and adjustment disorder -- to "direct confrontation with superiors … about his reassignment to his former position." In a report dated May 28, 1993, Dr. Matthew J. McDonald, a psychologist, similarly stated that appellant's post-traumatic stress disorder was "the direct result of a series of direct confrontations and meetings with his superiors about his future assignment and position with the Agency (Dept. of Interior)." As the Board has found that appellant's reassignments are not compensable factors under the Act, these reports from Drs. Slavin and McDonald lend no support to appellant's claim. Dr. McDonald's July 25, 1994 report attributing appellant's condition to "work-related traumatic stress of long-standing duration" is too general to establish appellant's claim. Dr. Lawrence A. Brain, a psychiatrist who evaluated appellant on February 2, 1994 with regard to his application for disability retirement, cited a conflict over assignments, which is not compensable as noted above, and difficult relationships with supervisors, which can be compensable if sufficiently described and substantiated. Dr. Brain did not, however, render an opinion on what caused appellant's disabling condition. It is not clear what factors Dr. David A. Boetcher, a Board-certified family practitioner, considered the cause of appellant's emotional condition, as Dr. Boetcher, in an August 5, 1993 report, indicated appellant was handling the stress of his work duties well. Dr. Boetcher appears to attribute appellant's condition to "the prospect of having to continue in this stressful position for an unknown period of time," and to his involvement with grievance procedures. Neither is compensable under the

[6] *See Norma L. Blank*, 43 ECAB 384 (1992).

Act.[7] There is no medical evidence that attributes appellant's emotional condition to compensable employment factors.

The decision of the Office of Workers' Compensation Programs dated August 24, 1995 is affirmed.

Dated, Washington, D.C.
June 19, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

[7] The fear of future injury is not compensable under the Act. *Louise G. Malloy*, 45 ECAB 613 (1994). Stress and frustration resulting from failure to obtain appropriate redress and corrective actions for complaints filed against the employing establishment are not covered under the Act. *Donna Faye Cardwell*, 41 ECAB 730 (1990).